

109TH CONGRESS
1ST SESSION

S. 1389

To reauthorize and improve the USA PATRIOT Act.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2005

Mr. SPECTER (for himself, Mrs. FEINSTEIN, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reauthorize and improve the USA PATRIOT Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “USA PATRIOT Improvement and Reauthorization Act
6 of 2005”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Patriot section 203; notice to court of disclosure of foreign intelligence information.

Sec. 3. Patriot section 206; additional requirements for multipoint electronic surveillance under FISA.

- Sec. 4. Patriot section 207; duration of FISA surveillance of non-United States persons.
- Sec. 5. Patriot section 212; enhanced oversight of good-faith emergency disclosures.
- Sec. 6. Patriot section 213; limitations on delayed notice search warrants.
- Sec. 7. Patriot section 214; factual basis for pen register and trap and trace authority under FISA.
- Sec. 8. Patriot section 215; procedural protections for court orders to produce records and other items in intelligence investigations.
- Sec. 9. Patriot section 505; procedural protections for national security letters.
- Sec. 10. Sunset provisions.
- Sec. 11. Enhancement of sunshine provisions.

1 **SEC. 2. PATRIOT SECTION 203; NOTICE TO COURT OF DIS-**
 2 **CLOSURE OF FOREIGN INTELLIGENCE IN-**
 3 **FORMATION.**

4 Section 2517 of title 18, United States Code, is
 5 amended by adding at the end the following:

6 “(9) Within a reasonable time after disclosure is
 7 made, pursuant to paragraph (6), (7), or (8), of the con-
 8 tents of any wire, oral, or electronic communication, an
 9 attorney for the Government must file, under seal, a notice
 10 with the judge that issued the order authorizing or approv-
 11 ing the interception of such wire, oral, or electronic com-
 12 munication, stating that such contents or evidence was
 13 disclosed and the departments, agencies, or entities to
 14 which the disclosure was made.”.

15 **SEC. 3. PATRIOT SECTION 206; ADDITIONAL REQUIRE-**
 16 **MENTS FOR MULTIPOINT ELECTRONIC SUR-**
 17 **VEILLANCE UNDER FISA.**

18 (a) **PARTICULARITY REQUIREMENT.**—Section
 19 105(c)(1)(A) of the Foreign Intelligence Surveillance Act
 20 of 1978 (50 U.S.C. 1805(c)(1)(A)) is amended by insert-

ing before the semicolon at the end the following: “, and
 if the nature and location of each of the facilities or places
 at which the surveillance will be directed is not known,
 and if the identity of the target is not known, the order
 shall include sufficient information to describe a specific
 target with particularity”.

(b) ADDITIONAL DIRECTIONS.—Section 105(c) of the
 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
 1805(c)) is amended—

(1) by striking “An order approving an elec-
 tronic surveillance under this section shall—”;

(2) in paragraph (1), by inserting before “speci-
 fy” the following: “SPECIFICATIONS.—An order ap-
 proving an electronic surveillance under this section
 shall”;

(3) in paragraph (1)(F), by striking “; and”
 and inserting a period;

(4) in paragraph (2), by inserting before “di-
 rect” the following: “DIRECTIONS.—An order ap-
 proving an electronic surveillance under this section
 shall”; and

(5) by adding at the end the following:

“(3) SPECIAL DIRECTIONS FOR CERTAIN OR-
 DERS.—An order approving an electronic surveil-
 lance under this section in circumstances where the

1 nature and location of each of the facilities or places
2 at which the surveillance will be directed is unknown
3 shall direct the applicant to provide notice to the
4 court within 10 days after the date on which surveil-
5 lance begins to be directed at any new facility or
6 place of—

7 “(A) the nature and location of each facil-
8 ity or place at which the electronic surveillance
9 is directed;

10 “(B) the facts and circumstances relied
11 upon by the applicant to justify the applicant’s
12 belief that each facility or place at which the
13 electronic surveillance is directed is being used,
14 or is about to be used, by the target of the sur-
15 veillance; and

16 “(C) a statement of any proposed mini-
17 mization procedures that differ from those con-
18 tained in the original application or order, that
19 may be necessitated by a change in the facility
20 or place at which the electronic surveillance is
21 directed.”.

22 (c) ENHANCED OVERSIGHT.—

23 (1) REPORT TO CONGRESS.—Section 108(a)(1)
24 of the Foreign Intelligence Surveillance Act of 1978
25 (50 U.S.C. 1808(a)(1)) is amended by inserting “,

1 and the Committee on the Judiciary of the House of
2 Representatives and the Committee on the Judiciary
3 of the Senate,” after “Senate Select Committee on
4 Intelligence”.

5 (2) MODIFICATION OF SEMIANNUAL REPORT
6 REQUIREMENT ON ACTIVITIES UNDER FOREIGN IN-
7 TELLIGENCE SURVEILLANCE ACT OF 1978.—Para-
8 graph (2) of section 108(a) of the Foreign Intel-
9 ligence Surveillance Act of 1978 (50 U.S.C.
10 1808(a)) is amended to read as follows:

11 “(2) Each report under the first sentence of para-
12 graph (1) shall include a description of—

13 “(A) the total number of applications made for
14 orders and extensions of orders approving electronic
15 surveillance under this title where the nature and lo-
16 cation of each facility or place at which the elec-
17 tronic surveillance will be directed is not known; and

18 “(B) each criminal case in which information
19 acquired under this Act has been authorized for use
20 at trial during the period covered by such report.”.

1 **SEC. 4. PATRIOT SECTION 207; DURATION OF FISA SUR-**
 2 **VEILLANCE OF NON-UNITED STATES PER-**
 3 **SONS.**

4 (a) **ELECTRONIC SURVEILLANCE ORDERS.**—Section
 5 105(e) of the Foreign Intelligence Surveillance Act (50
 6 U.S.C. 1805(e)) is amended—

7 (1) in paragraph (1)(B), by striking “, as de-
 8 fined in section 101(b)(1)(A)” and inserting “who is
 9 not a United States person”; and

10 (2) in paragraph (2)(B), by striking “as defined
 11 in section 101(b)(1)(A)” and inserting “who is not
 12 a United States person”.

13 (b) **PHYSICAL SEARCH ORDERS.**—Section 304(d) of
 14 the Foreign Intelligence Surveillance Act (50 U.S.C.
 15 1824(d)) is amended—

16 (1) in paragraph (1)(B), striking “as defined in
 17 section 101(b)(1)(A)” and inserting “who is not a
 18 United States person”; and

19 (2) in paragraph (2), striking “as defined in
 20 section 101(b)(1)(A)” and inserting “who is not a
 21 United States person”.

22 (c) **PEN REGISTERS.**—Section 402(e) of the Foreign
 23 Intelligence Surveillance Act (50 U.S.C. 1842(e)) is
 24 amended by—

25 (1) inserting after “90 days” the first place it
 26 appears the following: “, except that in cases where

1 the applicant has certified that the information like-
 2 ly to be obtained is foreign intelligence information
 3 not concerning a United States person, an order
 4 issued under this section may be for a period not to
 5 exceed 1 year”; and

6 (2) by inserting after “90 days” the second
 7 place it appears the following: “, except that in cases
 8 where the applicant has certified that the informa-
 9 tion likely to be obtained is foreign intelligence infor-
 10 mation not concerning a United States person, an
 11 extension of an order issued under this section may
 12 be for a period not to exceed 1 year”.

13 **SEC. 5. PATRIOT SECTION 212; ENHANCED OVERSIGHT OF**
 14 **GOOD-FAITH EMERGENCY DISCLOSURES.**

15 (a) ENHANCED OVERSIGHT.—Section 2702 of title
 16 18, United States Code, is amended by adding at the end
 17 the following:

18 “(d) REPORTING OF EMERGENCY DISCLOSURES.—
 19 On an annual basis, the Attorney General shall submit to
 20 the Committee on the Judiciary of the House of Rep-
 21 resentatives and the Committee on the Judiciary of the
 22 Senate a report containing—

23 “(1) the number of accounts from which the
 24 Department of Justice has received voluntary disclo-
 25 sures under subsection (b)(8); and

1 “(2) a summary of the basis for disclosure in
2 those instances where—

3 “(A) voluntary disclosures under sub-
4 section (b)(8) were made to the Department of
5 Justice; and

6 “(B) the investigation pertaining to those
7 disclosures was closed without the filing of
8 criminal charges.”.

9 (b) TECHNICAL AMENDMENTS TO CONFORM COM-
10 MUNICATIONS AND CUSTOMER RECORDS EXCEPTIONS.—

11 (1) VOLUNTARY DISCLOSURES.—Section 2702
12 of title 18, United States Code, is amended—

13 (A) in subsection (b)(8)—

14 (i) by striking “Federal, State, or
15 local”; and

16 (ii) by inserting “immediate” before
17 “danger”; and

18 (B) by striking subsection (c)(4) and in-
19 serting the following:

20 “(4) to a governmental entity, if the provider,
21 in good faith, believes that an emergency involving
22 immediate danger of death or serious physical injury
23 to any person requires disclosure without delay of
24 the information.”.

1 (2) DEFINITIONS.—Section 2711 of title 18,
2 United States Code, is amended—

3 (A) in paragraph (2), by striking “and” at
4 the end;

5 (B) in paragraph (3), by striking the pe-
6 riod at the end and inserting “; and”; and

7 (C) by adding at the end the following:

8 “(4) the term ‘governmental entity’ means a de-
9 partment or agency of the United States or any
10 State or political subdivision thereof.”.

11 **SEC. 6. PATRIOT SECTION 213; LIMITATIONS ON DELAYED**
12 **NOTICE SEARCH WARRANTS.**

13 (a) GROUNDS FOR DELAY.—Section 3103a(b)(1) of
14 title 18, United States Code, is amended by striking “may
15 have an adverse result (as defined in section 2705);” and
16 inserting “may—

17 “(A) endanger the life or physical safety of
18 an individual;

19 “(B) result in flight from prosecution;

20 “(C) result in the destruction of or tam-
21 pering with evidence;

22 “(D) result in intimidation of potential
23 witnesses; or

24 “(E) otherwise seriously jeopardize an in-
25 vestigation;”.

1 (b) LIMITATION ON REASONABLE PERIOD FOR
 2 DELAY.—Section 3103a(b)(3) of title 18, United States
 3 Code, is amended by—

4 (1) inserting “on a date certain that is” before
 5 “within a reasonable period of its execution”; and

6 (2) after “good cause shown” inserting “, sub-
 7 ject to the condition that extensions should only be
 8 granted upon an updated showing of the need for
 9 further delay and that each additional delay should
 10 be limited to periods of 90 days or less, unless the
 11 facts of the case justify a longer period of delay”.

12 (c) ENHANCED OVERSIGHT.—Section 3103a of title
 13 18, United States Code, is amended by adding at the end
 14 the following:

15 “(c) REPORTS.—

16 “(1) REPORT BY JUDGE.—Not later than 30
 17 days after the expiration of a warrant authorizing
 18 delayed notice (including any extension thereof) en-
 19 tered under this section, or the denial of such war-
 20 rant (or request for extension), the issuing or deny-
 21 ing judge shall report to the Administrative Office of
 22 the United States Courts—

23 “(A) the fact that a warrant was applied
 24 for;

1 “(B) the fact that the warrant or any ex-
2 tension thereof was granted as applied for, was
3 modified, or was denied;

4 “(C) the period of delay in the giving of
5 notice authorized by the warrant, and the num-
6 ber and duration of any extensions; and

7 “(D) the offense specified in the warrant
8 or application.

9 “(2) REPORT BY ADMINISTRATIVE OFFICE OF
10 THE UNITED STATES COURTS.—In April of each
11 year, the Director of the Administrative Office of the
12 United States Courts shall transmit to Congress a
13 full and complete report—

14 “(A) concerning the number of applica-
15 tions for warrants and extensions of warrants
16 authorizing delayed notice pursuant to this sec-
17 tion, and the number of warrants and exten-
18 sions granted or denied pursuant to this section
19 during the preceding calendar year; and

20 “(B) that includes a summary and analysis
21 of the data required to be filed with the Admin-
22 istrative Office by paragraph (1).

23 “(3) REGULATIONS.—The Director of the Ad-
24 ministrative Office of the United States Courts, in
25 consultation with the Attorney General, is author-

1 ized to issue binding regulations dealing with the
 2 content and form of the reports required to be filed
 3 under paragraph (1).”.

4 **SEC. 7. PATRIOT SECTION 214; FACTUAL BASIS FOR PEN**
 5 **REGISTER AND TRAP AND TRACE AUTHORITY**
 6 **UNDER FISA.**

7 (a) FACTUAL BASIS FOR PEN REGISTERS AND TRAP
 8 AND TRACE DEVICES UNDER FISA.—

9 (1) APPLICATION.—Section 402(c)(2) of the
 10 Foreign Intelligence Surveillance Act of 1978 (50
 11 U.S.C. 1842(c)(2)) is amended by striking “a certifi-
 12 cation by the applicant that” and inserting “a state-
 13 ment of the facts relied upon by the applicant to jus-
 14 tify the applicant’s belief that”.

15 (2) ORDER.—Section 402(d)(1) of the Foreign
 16 Intelligence Surveillance Act of 1978 (50 U.S.C.
 17 1842(d)(1)) is amended by striking “if the judge
 18 finds that” and all that follows and inserting “if the
 19 judge finds that the application includes sufficient
 20 facts to justify the belief that the information likely
 21 to be obtained is foreign intelligence information not
 22 concerning a United States person or is relevant to
 23 an ongoing investigation to protect against inter-
 24 national terrorism or clandestine intelligence activi-

1 ties and otherwise satisfies the requirements of this
2 section.”.

3 (b) RECORDS.—Section 402(d)(2) of the Foreign In-
4 telligence Surveillance Act of 1978 (50 U.S.C. 1842(d)(2))
5 is amended—

6 (1) in subparagraph (A)—

7 (A) in clause (ii), by adding “and” at the
8 end; and

9 (B) in clause (iii), by striking the period at
10 the end and inserting a semicolon; and

11 (2) in subparagraph (B)(iii), by striking the pe-
12 riod at the end and inserting “; and”; and

13 (3) by adding at the end the following:

14 “(C) shall direct that, upon the request of
15 the applicant, the provider of a wire or elec-
16 tronic communication service shall disclose to
17 the Federal officer using the pen register or
18 trap and trace device covered by the order—

19 “(i) in the case of the customer or
20 subscriber using the service covered by the
21 order (for the period specified by the
22 order)—

23 “(I) the name of the customer or
24 subscriber;

1 “(II) the address of the customer
2 or subscriber;

3 “(III) the telephone or instru-
4 ment number, or other subscriber
5 number or identifier, of the customer
6 or subscriber, including any tempo-
7 rarily assigned network address or as-
8 sociated routing or transmission infor-
9 mation;

10 “(IV) the length of the provision
11 of service by such provider to the cus-
12 tomer or subscriber and the types of
13 services utilized by the customer or
14 subscriber;

15 “(V) in the case of a provider of
16 local or long distance telephone serv-
17 ice, any local or long distance tele-
18 phone records of the customer or sub-
19 scribe;

20 “(VI) if applicable, any records
21 reflecting period of usage (or sessions)
22 by the customer or subscriber; and

23 “(VII) any mechanisms and
24 sources of payment for such service,
25 including the number of any credit

1 card or bank account utilized for pay-
2 ment for such service; and

3 “(ii) if available, with respect to any
4 customer or subscriber of incoming or out-
5 going communications to or from the serv-
6 ice covered by the order—

7 “(I) the name of such customer
8 or subscriber;

9 “(II) the address of such cus-
10 tomer or subscriber;

11 “(III) the telephone or instru-
12 ment number, or other subscriber
13 number or identifier, of such customer
14 or subscriber, including any tempo-
15 rarily assigned network address or as-
16 sociated routing or transmission infor-
17 mation; and

18 “(IV) the length of the provision
19 of service by such provider to such
20 customer or subscriber and the types
21 of services utilized by such customer
22 or subscriber.”.

23 (c) ENHANCED OVERSIGHT.—Section 406 of the
24 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
25 1846) is amended—

(1) in subsection (a), by inserting “, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “of the Senate”; and

(2) in subsection (b), by striking “On a semi-annual basis” through “the preceding 6-month period” and inserting, “In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year”.

**SEC. 8. PATRIOT SECTION 215; PROCEDURAL PROTECTIONS
FOR COURT ORDERS TO PRODUCE RECORDS
AND OTHER ITEMS IN INTELLIGENCE INVESTIGATIONS.**

(a) FACTUAL BASIS FOR REQUESTED ORDER.—

(1) APPLICATION.—Section 501(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(b)(2)) is amended by striking “shall specify that the records concerned are sought for” and inserting “shall include a statement of facts showing that there are reasonable grounds to believe that the records or other things sought are relevant to”.

1 (2) ORDER.—Section 501(c)(1) of the Foreign
2 Intelligence Surveillance Act of 1978 (50 U.S.C.
3 1861(c)(1)) is amended by striking “if the judge
4 finds that” and all that follows and inserting “if the
5 judge finds that the statement of facts contained in
6 the application establishes reasonable grounds to be-
7 lieve that the records or other things sought are rel-
8 evant to an authorized investigation conducted in ac-
9 cordance with subsection (a)(2) to obtain foreign in-
10 telligence information not concerning a United
11 States person or to protect against international ter-
12 rorism or clandestine intelligence activities, and the
13 application meets the other requirements of this sec-
14 tion.”.

15 (b) ADDITIONAL PROTECTIONS.—Section 501(c) of
16 the Foreign Intelligence Surveillance Act of 1978 (50
17 U.S.C. 1861(c)) is amended—

18 (1) in paragraph (2), by inserting after “An
19 order under this subsection” the following: “—

20 “(A) shall describe the tangible things con-
21 cerned with sufficient particularity to permit
22 them to be fairly identified;

23 “(B) shall prescribe a return date which
24 will provide a reasonable period of time within

1 which the tangible things can be assembled and
2 made available;

3 “(C) shall provide clear and conspicuous
4 notice of the principles and procedures set forth
5 in subsections (d) and (f); and
6 “(D)”.

7 (c) DIRECTOR APPROVAL FOR CERTAIN APPLICA-
8 TIONS.—Section 501(a) of the Foreign Intelligence Sur-
9 veillance Act of 1978 (50 U.S.C. 1861(a)) is amended—

10 (1) in paragraph (1), by striking “The Direc-
11 tor” and inserting “Except as provided in paragraph
12 (3), the Director”; and

13 (2) by adding at the end the following:

14 “(3) No application shall be made under this section
15 for an order requiring the production of library circulation
16 records, library patron lists, book sales records, book cus-
17 tomer lists, firearms sales records, or medical records con-
18 taining personally identifiable information without the
19 prior written approval of the Director of the Federal Bu-
20 reau of Investigation. The Director may delegate authority
21 to approve such an application to the Deputy Director of
22 the Federal Bureau of Investigation, but such authority
23 may not be further delegated.”.

1 (d) PROHIBITION ON DISCLOSURE.—Section 501(d)
2 of the Foreign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1861(d)) is amended to read as follows:

4 “(d)(1) No person shall disclose to any other person
5 that the Federal Bureau of Investigation has sought or
6 obtained tangible things pursuant to an order under this
7 section other than to—

8 “(A) those persons to whom such disclosure is
9 necessary to comply with such order;

10 “(B) an attorney to obtain legal advice or as-
11 sistance with respect to the production of things in
12 response to the order; or

13 “(C) other persons as permitted by the Director
14 of the Federal Bureau of Investigation or the des-
15 ignee of the Director.

16 “(2)(A) Any person having received a disclosure
17 under subparagraph (A), (B), or (C) of paragraph (1)
18 shall be subject to the prohibitions on disclosure under
19 that paragraph.

20 “(B) Any person making a further disclosure author-
21 ized by subparagraph (A), (B), or (C) of paragraph (1)
22 shall notify the person to whom the disclosure is made
23 of the prohibitions on disclosure under this subsection.

1 “(3) An order under this section shall notify, in writ-
2 ing, the person to whom the order is directed of the non-
3 disclosure requirements under this subsection.”.

4 (e) JUDICIAL REVIEW.—Section 501 of the Foreign
5 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is
6 amended by adding at the end the following:

7 “(f)(1)(A) Any person receiving an order to produce
8 any tangible thing under this section may challenge the
9 legality of that order by filing a petition in the court estab-
10 lished under section 103(a).

11 “(B) That petition may be considered by any judge
12 of the court.

13 “(C) The judge considering the petition may modify
14 or set aside the order if the judge finds that the order
15 does not meet the requirements of this section or is other-
16 wise unlawful.

17 “(D) Any petition for review of a decision to affirm,
18 modify, or set aside an order under this paragraph by the
19 United States or any person receiving such order shall be
20 sent to the court of review established under section
21 103(b), which shall have jurisdiction to consider such peti-
22 tions.

23 “(E) The court of review shall immediately provide
24 for the record a written statement of the reasons for its
25 decision and, on petition of the United States or any per-

1 son receiving such order for a writ of certiorari, the record
 2 shall be transmitted under seal to the Supreme Court,
 3 which shall have jurisdiction to review such decision.

4 “(2)(A) Judicial proceedings under this subsection
 5 shall be concluded as expeditiously as possible.

6 “(B) The record of proceedings, including applica-
 7 tions made and orders granted, shall be maintained under
 8 security measures established by the Chief Justice of the
 9 United States in consultation with the Attorney General
 10 and the Director of National Intelligence.

11 “(3) All petitions under this subsection shall be filed
 12 under seal, and the court, upon the request of the Govern-
 13 ment, shall review any Government submission, which may
 14 include classified information, as well as the application
 15 of the Government and related materials, ex parte and in
 16 camera.”.

17 (f) ENHANCED OVERSIGHT.—Section 502 of the For-
 18 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
 19 1862) is amended—

20 (1) in subsection (a), by inserting “, and the
 21 Committee on the Judiciary of the House of Rep-
 22 resentatives and the Committee on the Judiciary of
 23 the Senate,” after “of the Senate”; and

24 (2) in subsection (b)—

1 (A) by striking “On a semiannual basis”
2 through “the preceding 6-month period” and
3 inserting “In April of each year, the Attorney
4 General shall transmit to the Congress a report
5 setting forth with respect to the preceding cal-
6 endar year”;

7 (B) in paragraph (1), by striking “and” at
8 the end;

9 (C) in paragraph (2), by striking the pe-
10 riod at the end and inserting “; and”; and

11 (D) by adding at the end the following:

12 “(3) the total number of applications made for
13 orders approving requests for the production of tan-
14 gible things under section 501, and the total number
15 of orders either granted, modified, or denied, when
16 the application or order involved any of the fol-
17 lowing:

18 “(A) The production of tangible things
19 from a library, as defined in section 213(2) of
20 the Library Services and Technology Act (20
21 U.S.C. 9122(2)).

22 “(B) The production of tangible things
23 from a person or entity primarily engaged in
24 the sale, rental, or delivery of books, journals,

1 magazines, or other similar forms of commu-
2 nication whether in print or digitally.

3 “(C) The production of records related to
4 the purchase of a firearm, as defined in section
5 921(a)(3) of title 18, United States Code.

6 “(D) The production of health information,
7 as defined in section 1171(4) of the Social Se-
8 curity Act (42 U.S.C. 1320d(4)).

9 “(E) The production of taxpayer return in-
10 formation, return, or return information, as de-
11 fined in section 6103(b) of the Internal Rev-
12 enue Code of 1986 (26 U.S.C. 6103(b)).

13 “(c) Each report under subsection (b) shall be sub-
14 mitted in unclassified form, but may include a classified
15 annex.

16 “(d) In April of each year, the Attorney General shall
17 transmit to the Administrative Office of the United States
18 Courts and to Congress a report setting forth with respect
19 to the preceding calendar year—

20 “(1) the total number of applications made for
21 orders approving requests for the production of tan-
22 gible things under section 501; and

23 “(2) the total number of such orders either
24 granted, modified, or denied.”.

1 **SEC. 9. PATRIOT SECTION 505; PROCEDURAL PROTECTIONS**
2 **FOR NATIONAL SECURITY LETTERS.**

3 (a) IN GENERAL.—Section 2709(a) of title 18,
4 United States Code, is amended—

5 (1) by striking “A wire or electronic commu-
6 nication service provider” and inserting the fol-
7 lowing:

8 “(1) IN GENERAL.—A wire or electronic com-
9 munication service provider”; and

10 (2) by adding at the end the following:

11 “(2) JUDICIAL REVIEW.—A wire or electronic
12 communication service provider who receives a re-
13 quest under subsection (b) may, at any time, seek a
14 court order from an appropriate United States dis-
15 trict court to modify or set aside the request. Any
16 such motion shall state the grounds for challenging
17 the request with particularity. The court may modify
18 or set aside the request if compliance would be un-
19 reasonable or oppressive.”.

20 (b) NONDISCLOSURE.—Section 2709(c) of title 18,
21 United States Code, is amended—

22 (1) by striking “No wire or electronic commu-
23 nication service provider” and inserting the fol-
24 lowing:

25 “(1) IN GENERAL.—No wire or electronic com-
26 munication service provider”; and

1 (2) by adding at the end the following:

2 “(2) JUDICIAL REVIEW.—A wire or electronic
3 communication service provider who receives a re-
4 quest under subsection (b) may, at any time, seek a
5 court order from an appropriate United States dis-
6 trict court challenging the nondisclosure requirement
7 under paragraph (1). Any such motion shall state
8 the grounds for challenging the nondisclosure re-
9 quirement with particularity.

10 “(3) STANDARD OF REVIEW.—The court may
11 modify or set aside such a nondisclosure requirement
12 if there is no reason to believe that disclosure may
13 endanger the national security of the United States,
14 interfere with a criminal, counterterrorism, or coun-
15 terintelligence investigation, interfere with diplo-
16 matic relations, or endanger the life or physical safe-
17 ty of any person. In reviewing a nondisclosure re-
18 quirement, the certification by the Government that
19 the disclosure may endanger the national security of
20 the United States or interfere with diplomatic rela-
21 tions shall be treated as conclusive unless the court
22 finds that the certification was made in bad faith.”.

23 (c) ENFORCEMENT OF NATIONAL SECURITY LET-
24 TERS.—Section 2709(a) of title 18, United States Code,

1 as amended by subsection (b), is amended by adding at
 2 the end the following:

3 “(3) ENFORCEMENT OF REQUESTS.—The At-
 4 torney General may seek enforcement of a request
 5 under subsection (b) in an appropriate United
 6 States district court if a recipient refuses to comply
 7 with the request.”.

8 (d) DISCLOSURE OF INFORMATION.—

9 (1) SECURE PROCEEDINGS.—Section 2709 of
 10 title 18, United States Code, as amended by sub-
 11 sections (b) and (c), is amended—

12 (A) in subsection (a), by adding at the end
 13 the following:

14 “(4) SECURE PROCEEDINGS.—The disclosure of
 15 information in any proceedings under this subsection
 16 may be limited consistent with the requirements of
 17 the Classified Information Procedures Act (18
 18 U.S.C. App).”; and

19 (B) in subsection (c), by adding at the end
 20 the following:

21 “(4) SECURE PROCEEDINGS.—The disclosure of
 22 information in any proceedings under this subsection
 23 may be limited consistent with the requirements of
 24 the Classified Information Procedures Act (18
 25 U.S.C. App).”.

1 (2) DISCLOSURE TO NECESSARY PERSONS.—

2 Section 2709(c)(1) of title 18, United States Code,
3 as amended by subsection (b), is amended—

4 (A) by inserting after “any person” the
5 following: “, except for disclosure to an attorney
6 to obtain legal advice regarding the request or
7 to persons to whom disclosure is necessary in
8 order to comply with the request,”; and

9 (B) by adding at the end the following:
10 “Any attorney or person whose assistance is
11 necessary to comply with the request who is no-
12 tified of the request also shall not disclose to
13 any person that the Federal Bureau of Inves-
14 tigation has sought or obtained access to infor-
15 mation or records under this section.”.

16 **SEC. 10. SUNSET PROVISIONS.**

17 (a) MODIFICATION OF PATRIOT ACT SUNSET PRO-
18 VISION.—Section 224(a) of the USA PATRIOT Act (18
19 U.S.C. 2510 note) is amended to read as follows:

20 “(a) IN GENERAL.—Except as provided in subsection
21 (b), sections 206 and 215, and the amendments made by
22 those sections, shall cease to have effect on December 31,
23 2009, and any provision of law amended or modified by
24 such sections shall take effect on January 1, 2010, as in
25 effect on the day before the effective date of this Act.”.

1 (b) EXTENSION OF SUNSET ON “LONE WOLF” PRO-
 2 VISION.—Subsection (b) of section 6001 of the Intelligence
 3 Reform and Terrorism Prevention Act of 2004 (50 U.S.C.
 4 1801 note) is amended to read as follows:

5 “(b) SUNSET.—

6 “(1) IN GENERAL.—Except as provided in para-
 7 graph (2), the amendment made by subsection (a)
 8 shall cease to have effect on December 31, 2009.

9 “(2) SPECIAL RULE.—With respect to any par-
 10 ticular foreign intelligence investigation that began
 11 before the date on which the amendment made by
 12 subsection (a) ceases to have effect, section
 13 101(b)(1) of the Foreign Intelligence Surveillance
 14 Act of 1978, as amended by subsection (a), shall
 15 continue in effect.”.

16 (c) REPEAL OF SUNSET PROVISION RELATING TO
 17 SECTION 2332B AND THE MATERIAL SUPPORT SECTIONS
 18 OF TITLE 18, UNITED STATES CODE.—Section 6603 of
 19 the Intelligence Reform and Terrorism Prevention Act of
 20 2004 (Public Law 108–458; 118 Stat. 3762) is amended
 21 by striking subsection (g).

22 (d) TECHNICAL AMENDMENT.—Section 1(a) of the
 23 Uniting and Strengthening America by Providing Appro-
 24 priate Tools Required to Intercept and Obstruct Ter-

1 rorism (USA PATRIOT ACT) Act of 2001 is amended
2 to read as follows:

3 “(a) SHORT TITLE.—This Act may be cited as the
4 ‘Uniting and Strengthening America by Providing Appro-
5 priate tools Required to Intercept and Obstruct Terrorism
6 Act of 2001’ or the ‘USA PATRIOT Act’.”.

7 **SEC. 11. ENHANCEMENT OF SUNSHINE PROVISIONS.**

8 (a) RULES AND PROCEDURES FOR FISA COURTS.—
9 Section 103 of the Foreign Intelligence Surveillance Act
10 of 1978 (50 U.S.C. 1803) is amended by adding at the
11 end the following:

12 “(e)(1) The courts established pursuant to sub-
13 sections (a) and (b) may establish such rules and proce-
14 dures, and take such actions, as are reasonably necessary
15 to administer their responsibilities under this Act.

16 “(2) The rules and procedures established under
17 paragraph (1), and any modifications of such rules and
18 procedures, shall be recorded, and shall be transmitted to
19 the following:

20 “(A) All of the judges on the court established
21 pursuant to subsection (a).

22 “(B) All of the judges on the court of review es-
23 tablished pursuant to subsection (b).

24 “(C) The Chief Justice of the United States.

1 “(D) The Committee on the Judiciary of the
2 Senate.

3 “(E) The Select Committee on Intelligence of
4 the Senate.

5 “(F) The Committee on the Judiciary of the
6 House of Representatives.

7 “(G) The Permanent Select Committee on In-
8 telligence of the House of Representatives.

9 “(3) The transmissions required by paragraph (2)
10 shall be submitted in unclassified form, but may include
11 a classified annex.”.

12 (b) ENHANCED CONGRESSIONAL OVERSIGHT OF
13 FISA EMERGENCY AUTHORITIES.—

14 (1) EMERGENCY ELECTRONIC SURVEIL-
15 LANCE.—Section 107 of the Foreign Intelligence
16 Surveillance Act of 1978 (50 U.S.C. 1807), is
17 amended—

18 (A) in paragraph (a), by striking “and” at
19 the end;

20 (B) in paragraph (b), by striking the pe-
21 riod at the end and inserting “; and”; and

22 (C) by adding at the end the following:

23 “(e) the total number of emergency employ-
24 ments of electronic surveillance under section 105(f)

1 and the total number of subsequent orders approv-
2 ing or denying such electronic surveillance.”.

3 (2) EMERGENCY PHYSICAL SEARCHES.—Section
4 306 of the Foreign Intelligence Surveillance Act of
5 1978 (50 U.S.C. 1826) is amended—

6 (A) in the first sentence, by inserting “,
7 and the Committee on the Judiciary of the
8 House of Representatives and the Committee
9 on the Judiciary of the Senate,” after “the Sen-
10 ate”;

11 (B) in the second sentence, by striking
12 “and the Committees on the Judiciary of the
13 House of Representatives and the Senate”;

14 (C) in paragraph (2), by striking “and” at
15 the end;

16 (D) in paragraph (3), by striking the pe-
17 riod at the end and inserting “; and”; and

18 (E) by adding at the end the following:

19 “(4) the total number of emergency physical
20 searches authorized by the Attorney General under
21 section 304(e) (50 U.S.C. 1824(e)), and the total
22 number of subsequent orders approving or denying
23 such physical searches.”.

24 (3) EMERGENCY PEN REGISTERS AND TRAP
25 AND TRACE DEVICES.—Section 406(b) of the For-

1 eign Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1846(b)), as amended by section 7, is amend-
3 ed—

4 (A) in paragraph (1), by striking “and” at
5 the end;

6 (B) in paragraph (2), by striking the pe-
7 riod at the end and inserting “; and”; and

8 (C) by adding at the end the following:

9 “(3) the total number of pen registers and trap
10 and trace devices whose installation and use was au-
11 thorized by the Attorney General on an emergency
12 basis under section 403, and the total number of
13 subsequent orders approving or denying the installa-
14 tion and use of such pen registers and trap and
15 trace devices.”.

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